



Paper No. 9

MERCHANT & GOULD PC
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MINNEAPOLIS MN 55402-0903**COPY MAILED****AUG 06 2002****OFFICE OF PETITIONS**

In re Application of : CORRECTED
Hui et al. : DECISION DISMISSING
Application No. 10/005,210 : PETITION
Filed: December 4, 2001 :
Attorney Docket No. 12364.27USU1 :

This is a decision on the petition filed March 25, 2002, requesting that the above-identified application be accorded a filing date of December 4, 2001, with Figures 8 and 9a-c as part of the original disclosure.

On December 4, 2001, applicants filed the above-identified application. On March 20, 2002, the Office of Initial Patent Examination mailed a Notice of Incomplete Reply (Nonprovisional), stating that the Office had received the reply of March 1, 2002, to the Notice to File Missing Parts mailed January 25, 2002. However, the reply did not include the basic filing fee, an executed oath or declaration, a surcharge, or Figure 8b as described in the specification. The Notice indicated that the period for response remained as set forth in the Notice to File Missing Parts and extensions of time were available.

On March 25, 2002, applicants filed, inter alia, the present petition, a \$130.00 petition fee, and two (2) sheets of drawings containing Figures 8 and 9a-c. Applicants explained:

The description of the Figures on page 5 in the specification is inaccurate. In fact, Figure 8 has only one illustration and Figure 9 has three illustrations (a-c). As further evidence, Applicants also provide page 13 of the specification that refers to Figure 8 on line 23, and page 14 that refers to the three different values illustrated in Figures 9(a)-9(c). Applicants respectfully submit no items were omitted in the filing of this application. No new matter has been added.

Petition dated March 25, 2002, p. 1.

It is obvious from the petition that no drawings were actually missing on December 4, 2001. Rather, the drawings of Figures 8 and 9a-c were simply mislabeled as a result of applicants' filing error. However, the Notice of Incomplete Reply mailed on March 20, 2002, was correct in stating that Figure 8b appeared to

have been omitted. Therefore, the requirement to submit omitted Figure 8b set forth in the Notice of Incomplete Reply was proper and will not be withdrawn.

Accordingly, the petition is dismissed.

The \$130.00 petition fee will not be refunded because the present petition was not necessitated by any error on the part of the United States Patent and Trademark Office.

A preliminary amendment adding the proper labels to the mislabeled drawing figures should be filed prior to the first action on the merits.

The application is being returned to the Office of Initial Patent Examination for further processing with a filing date of December 4, 2001, using the drawings filed on that date.

Any inquiries related to this decision should be directed to the undersigned at (703) 306-5589.

Christina Tartera Donnell

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